

VZCZCXRO9180
PP RUEHAG RUEHROV RUEHSR
DE RUEHVI #0411/01 0931552
ZNY CCCCC ZZH
P 031552Z APR 09
FM AMEMBASSY VIENNA
TO RUEAWJA/DEPT OF JUSTICE WASHDC PRIORITY
RUCNFB/FBI WASHDC PRIORITY
RUEAHLA/HOMELAND SECURITY CENTER WASHINGTON DC PRIORITY
RUEHC/SECSTATE WASHDC PRIORITY 2254
INFO RUCNMEM/EU MEMBER STATES COLLECTIVE

C O N F I D E N T I A L SECTION 01 OF 03 VIENNA 000411

SIPDIS

E.O. 12958: DECL: 04/01/2024
TAGS: [CVIS](#) [PGOV](#) [PTER](#) [AU](#)
SUBJECT: VWP AGREEMENTS: CONSULTATIONS WITH GOA; MANAGING
PRESS STORM

REF: VIENNA 156 AND PREVIOUS

Classified By: Charge d'Affaires Scott Kilner. Reason: 1.4(b) and (d).

Summary

¶1. (C) On March 23-24, a joint HSPD-6 and PCSC team from the Depts. of State, Justice, Homeland Security and the Terrorist Screening Center held consultations with representatives of the Austrian Foreign, Interior, Justice, and Defense Ministries, staff from the Chancellor's Data Protection Office and members of the Austrian Data Protection Council. The talks, held at Austria's request, focused on concerns in Austria's data protection community about the extent of U.S. access to Austrian data, the protections that would be afforded to Austrian data, and the rights of Austrian citizens to access their data and to legal redress. U.S. responses to Austrian questions appeared to be received favorably by most of the participants, and all agreed the talks were useful in explaining the differences between the U.S. and Austrian data protection regimes. However, Austrian data protection officials remained skeptical about the adequacy of U.S. protections.

¶2. (C) In summing up the results of the consultations, the Austrian side indicated that the next step would likely be an early request from an inter-ministerial working group asking the cabinet to approve a formal negotiating mandate. On March 25, however, a full, front-page article appeared in a leading Austrian daily which, using false or misinterpreted information based on a leak to the paper, painted an alarmist picture of U.S. objectives. The article alleged that the U.S. had threatened to drop Austria from the Visa Waiver Program if it did not negotiate the agreements by the end of 2009. Embassy diplomatic and public diplomacy intervention appears to have reined in the story, but an Interior Ministry contact has informed the Embassy that an inter-ministerial working group was unable to approve a request to the cabinet for a negotiating mandate at its meeting earlier this week as expected. End Summary

Consultations

¶3. (U) The Austrian team was led by MFA A/S equivalent for Consular and Legal Affairs Amb. Elisabeth Tichy-Fisslberger and included Brigadier Kurt Hager from the Interior Ministry; the Chairman, of the Data Protection Council, Dr. Harald Woegerberger, and seven other Council members; the Director of the Chancellor's Office for Data Protection, Dr. Eva Souhrada-Kirchmayer; as well as representatives from the Ministries of Justice and Defense.

¶4. (C) After opening the meeting and noting Austrian data protection concerns, Amb. Tichy-Fisslberger turned the floor over to the U.S. for a series of presentations on the two

draft agreements, with particular emphasis on data protection provisions contained in them as well as an overview of U.S. legal and administrative mechanisms designed to protect data from misuse and granting data subjects rights to redress in the case of misuse. In his presentation on the HSPD-6, Terrorist Screening Center Deputy Director Rick Kopel emphasized that Austria would own and be able to correct or remove the data it provided (names plus basic identifiers); control access to any further data on subjects it placed on the TSC watchlist; and that Austrian data would not be accessible to third parties.

15. (C) In briefings on the PCSC, the U.S. side emphasized the sector-specific nature of U.S. data protection/privacy laws, in contrast to the Austrian system which is based on a single law. Also, while noting that non-U.S. citizens were not covered by the Privacy Act, the U.S. side briefed on many other laws, regulations, and policies that protect the rights of all data subjects and on policies and programs that allow any person to seek access to and request corrections in data held on him/her, including granting the right to take legal action to seek redress in some circumstances.

16. (C) Austrian questions focused on the application of U.S. data protection and privacy law to non-citizens, with a very strong focus on legal redress and the legal basis for agency programs and policies on data protection. Questioners from the Data Protection Office and Data Protection Council members in the balance of the morning on March 23 frequently alleged that U.S. policies and programs not specifically required by law could be changed "overnight." Specific concerns included Art. V, para 11 of the draft HSPD-6

VIENNA 00000411 002 OF 003

agreement that allows for the retention of inactive data for 50 years and does not specify control mechanisms to prevent unauthorized access to archived data. The Austrians requested copies of DHS TRIP regulations in relation to para 13 on redress.

17. (C) In the afternoon, questioning continued from the Chancellor's Data Protection Office. (Data Protection Council members participated only in the morning session.) The Austrian side asked why the U.S. had been willing, in the Eurojust agreement to establish an individual right of EU citizens to seek corrections to their personal data, but did not propose to do so in the HSPD-6 and PCSC agreements. The U.S. side explained that the right in Eurojust to ask did not mean that changes would be made. In contrast, in the proposed HSPD-6 and PCSC agreements the U.S. would be obliged to make any changes requested by the partner government, which, since the partner retained control of the data and was the appropriate interlocutor for its citizens. Several Austrian participants suggested that, even if it was a weaker right, granting it would be an important political signal.

18. (C) At the end of the day, Amb. Tichy-Fisslberegr summed up the discussion, noting that the U.S. side would have a better sense of the extent to which data protection measures explicitly set forth in law were important to the Austrian side, but also noting that the Austrian side was not seeking harmonization of U.S. and Austrian law, but rather assurances/evidence that U.S. law provided protection equivalent to that in Austrian law.

19. (U) Discussion the morning of March 24 focused on a review of the full text of the HSPD-6 agreement, but again most substantive exchange focused on data protection elements, with the participants re-hashing many of the questions and issues covered the previous day. To provide further guidance, the participants agreed that the Austrian side would provide a list of additional or (from its perspective) unanswered questions, to which the U.S. would respond in writing. In addition, the U.S. would provide Austria with the various laws, regulations, and results of inspections the Austrian side had requested. Concluding her summation, Amb.

Tichy-Fisslberger explained that the next step on the GoA side would likely be an early request from an inter-ministerial working group to the cabinet, asking it to approve a formal negotiating mandate.

¶10. (C) Embassy Comment on Consultations: The data protection officials on the Austrian side appeared to remain deeply skeptical toward the very concept of sharing data for law enforcement purposes with the United States. While acknowledging that exemptions to data protection law exist for national security and law enforcement purposes in Austria, many of their questions seemed based on the premise that data subjects should have the same rights of access to law enforcement and national security data bases that they, as citizens, normally would have to other data bases. Data protection officials were also clearly skeptical of the effectiveness of data protection regimes built on anything other than explicit legal obligations. In our view, it is furthermore completely possible that these officials view the HSPD-6 and PCSC agreements as inherently suspect because they originated under the previous U.S. Administration. End Comment.

Press Storm

¶11. (U) On March 26, centrist daily "Die Presse" ran a full-front page story under the headline "USA Wants Austria's Police Data," with the sub-headline "U.S. Homeland Security demands names, addresses, fingerprints and DNA data from investigative holdings. In the event of a refusal threatens to impose visa requirements on Austria. Interior Ministry willing to cooperate. Legal authorities cautionary." The article further alleged the absence of any effective protection of the data supposedly demanded by the U.S. and described the two agreements in false and/or misleading fashion. The author noted that copies of the draft texts as well as of a Dec. 31 letter from DHS A/S Stuart Baker to the Austrian Embassy, which contained the alleged threat to Austrian participation in the VWP, had been provided to "Die Presse."

¶12. (C) Based on material in the article and discussions with GoA contacts, the Embassy is confident that the source of the leaked documents and of the misleading/false characterizations of the agreements was in the Chancellor's Data Protection Office. The article, in our view, had

VIENNA 00000411 003 OF 003

thepotential to provoke a public and media backlash against concluding the two agreements that Austrian politicians might be unwilling to challenge. A vigorous Embassy response was therefore launched. This included a same-day call presenting U.S. concerns to Amb. Tichy-Fisslberger at the MFA and a meeting by the Charge with the Chancellor's Diplomatic Advisor. The MFA responded with some vigor and undertook to consult within the GoA on a response, suggesting that the Interior Ministry might take the lead. The Chancellery was less inclined to take specific action, but did agree to investigate the possible source of the leak. In mid-day radio reports March 26, the Interior and Foreign Ministries were cited as denying that there had been any U.S. threat to the VWP or that the U.S. was seeking direct access to Austrian police data bases.

¶13. (U) Embassy also contacted "Die Presse," which agreed to publish a U.S. rebuttal to the March 26 article. The strongly worded letter from the Charge appeared in the March 27 edition. Charge also gave a television interview in German to Austria's main TV station, ORF TV, which was broadcast the evening of March 26 and focused on the absence of a threat to the VWP. Nonetheless, during the course of the day March 26 and into March 27, representatives of various Austrian political parties and NGOs denounced sharing police data with the U.S. The March 27 editions of papers across Austria also included sharply critical articles or

editorial commentary on the proposed data exchange agreements. Given the continued alarmist and misinformed reaction, Embassy scheduled an on-the-record press briefing for March 30, for which Washington agencies provided extensive and timely guidance. The Monday briefing appeared well-received by the journalists who attended, including the author of the original "Die Presse" article. The articles in the March 31 papers were largely factual and should, Embassy believes, lead to a calming of the situation for now. However, media interest continues and other stories may be forthcoming.

Impact

¶14. (C) As noted in para 8, at the conclusion of the talks the GoA participants were leaning toward submitting an early proposal to the cabinet for a formal negotiating mandate. The inter-ministerial working group on the agreements met early the week of March 30 to consider such a request. However, according to the Interior Ministry's Kurt Hager (strictly protect), the working group was unable to agree on making a request. Hager also reported that the MFA was taking closer hold of the process within the GoA and that future official communication would be through the MFA exclusively.

Final Comment

¶15. (C) Embassy believes the media dimension of this story has been contained for the moment. However, it could easily flare up again, given the apparent willingness of the Data Protection Office to take extreme measures to undermine the conclusion of HSPD-6 and PCSC agreements. Embassy will undertake further discussions in the coming days to gain a more detailed understanding of inter-ministerial dynamics (including the Data Protection Office's ability to effectively veto working group action) and provide Washington with our recommendations for next steps with Austria. End Comment.

KILNER